

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.33419 of 2015
MP.No.1 and 2 of 2015

M/s.Siva Sakthi Enterprises by its
Sole Proprietor, G.Seralathan
Chennai-17 ... Petitioner

Vs

- 1.The Government of Tamil Nadu by its
Additional Chief Secretary to Government
Industries (MMB.2) Department,
Fort St.George, (Secretariat) Chennai-9
- 2.The District Collector, Villupuram District
- 3.The Commissioner of Geology and Mining
Directorate of Geology and Mining
Guindy, Chennai-32 ... Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in GO(D)No.116, dated 25.06.2015 and to quash the same and to direct the Respondents to consider the renewal application of the Petitioner, dated 17.10.2003, after providing due (opportunity) to the pettioenr and in accordance with law.

For Petitioner : Mr.Pari Ramaiah
For Respondent : Mr.T.N.Rajagopalan, SGP

ORDER

In this Writ Petition, the Petitioner seeks to quash the impugned order dated 25.06.2015 of the 1st Respondent, rejecting the application for renewal of quarry lease, dated 17.10.2003 and for a direction to the Respondents to consider the said application, in accordance with law.

2. On the application of the Petitioner dated 1.10.1992, by order dated 9.9.1993, the Petitioner was granted quarry lease for a period of ten years for quarrying black granite in the patta lands to an extent of 0.81.0 hectares in SF.No.30/1A2 of Parayampattu Village, Gingee Taluk, Villupuram District, which was acquired by the Petitioner by Settlement Deed dated 24.3.2003 from his father. The lease deed was

executed on 01.11.1993. The Petitioner made an application dated 17.10.2003 for renewal of the quarry lease for a further period of twenty years, after paying the necessary fees. As there was interference with the quarrying operations by the Respondents, the Petitioner filed W.P.No.30126 of 2003, which was disposed of by this Court by order dated 10.12.2007, allowing the Petitioner to continue with the quarry operations till the disposal of the renewal application. Since then the Petitioner had been carrying quarrying operations. After lapse of more than 12 years, without fixing the charges payable by the Petitioner for transportation, the impugned order dated 25.6.2015 has been passed, rejecting the renewal application of the Petitioner. Hence, this Writ Petition has been filed.

3. The learned Counsel for the Petitioner contended that the impugned order has been passed, without affording an opportunity to the Petitioner, after an inordinate delay of 12 years, without following due process of law and without calling for any fresh documents, thereby violating the principles of natural justice and hence, the impugned order is liable to be set aside and that the Respondents may be directed to consider the renewal application of the Petitioner, in accordance with law.

4. The learned Special Government Pleader for the Respondents, by filing a counter affidavit of the 1st Respondent, has contended that though the Petitioner gave the representations on 28.8.2008 and thereafter on 28.7.2015, since the Petitioner did not give the details as required and did not pursue the representations, no transport permits were issued and after getting clarification from the Government vide letters dated 12.9.2008 and 15.4.2015, the impugned order has been passed, rejecting the renewal application of the Petitioner on the grounds that the Petitioner did not produce fresh documents and that the area applied for lease was less than one hectare and that the renewal application was not submitted one year prior to expiry of the lease and that the submitted provisions are applicable only to the prospective cases and are not applicable to retrospective cases.

5. This Court heard and considered the submissions made by the learned Counsel on either side and also perused the materials placed on record.

6. The petitioner was granted lease in respect of granite quarry in his patta lands in his favour for a period of ten years, i.e. from 01.11.1993 to 31.10.2003 and necessary lease agreement was executed on 01.11.1993. Meanwhile, the Government of India introduced the Granite Conservation and Development Rules, 1999, with effect from 01.06.1999 to have an uniform policy throughout India. As per the said Rules, lease shall be granted for a minimum period of twenty years and one renewal of an equivalent period.

7. In the case on hand, the petitioner submitted the renewal application on 17.10.2003, so to say, before the expiry of the lease period on 31.10.2003. The claim of the petitioner is that as per the said Central Rules, he is entitled for extension of lease period, with effect from 01.06.1999.

8. While so, the petitioner filed a writ petition in W.P.No.30126 of 2003 before this Court, seeking to forbear the respondents from interfering with his right to continue quarry operations and transport granite from his lands, till the disposal of the renewal application, dated 17.10.2003. Following the judgment of the Division Bench of this Court, in W.P.Nos.2905 of 2005, etc., dated 06.09.2007, this Court passed the following order:

"4. While entertaining the present Writ Petition, this Court, by order dated 29.10.2003, has granted interim injunction and the same was made absolute. Following the above Division Bench judgment, there shall be a direction to the State Government to fix the revised rental/charges in accordance with law and after fixing the rental/charges, the State Government shall consider the application for renewal within a period of eight weeks thereafter. In the mean time, the petitioner is entitled to carry on quarrying operations till the applications for renewal is considered and disposed of by the State Government."

9. Even thereafter also, the request of the petitioner for carrying on quarrying operations till the disposal of the renewal application has not been considered and the same is found reflected in the order impugned. The relevant portion is reproduced as under:

"2. The District Collector, Villupuram has further stated that based on the above orders Tvl.Sivasakthi Enterprises had requested to issue transport permit for the black granite blocks already quarried and kept. Therefore the opinion of the Government Pleader, High Court, Chennai, was obtained by the District Collector in which he has opined that the proper course is to dispose of the renewal application on merits in accordance with law. The District Collector, Villupuram has further stated that the renewal of quarry lease application of Tvl.Sivasakthi Enterprises for a further period of twenty years under rule 19A of Tamil Nadu Minor Mineral Concession Rules, 1959 over an extent of 01.81.0 hectares of patta lands in S.F.No.30/1A2 of Parayampattu Village, Gingee Taluk in Villupuram District is not entertainable and recommended the renewal application for rejection."

10. It is, therefore, clear that though the petitioner has made the renewal application on 17.10.2003, the same has not been considered for nearly 12 years and in the meanwhile, his request for carrying out quarrying operations also got denied and ultimately, by the order impugned, his renewal application has been rejected, stating the following reasons:

"(a) The firm did not produce fresh documents to consider their case.

(b) The area applied for lease was less than one hectare.

(c) Renewal application was not submitted one year prior to expiry of the lease.

(d) The lease was granted to the firm prior to the substitution of rule 19A during the year 2001. The submitted provisions are applicable only to prospective cases and is not applicable retrospectively as in this case and hence not renewable."

11. This Court is unable to understand as to why the respondents had taken such a long time to consider the renewal application of the petitioner, that was submitted even as early as on 17.10.2003. But, in the impugned order, it has been stated as though the renewal application was submitted after the expiry of the lease period.

12. On a deep scrutiny of the original records, this Court finds that the renewal application was submitted by the petitioner on 17.10.2003 and hence, the rejection of the renewal application on that ground, is untenable.

13. Insofar as the other grounds, on which, the renewal application was rejected are concerned, it is for the authorities to decide as to whom the lease should be given in accordance with law and this Court has not gone into the same.

14. Now, the main grievance of the petitioner is that the petitioner had been continuing the quarrying operations between 01.11.1993 and 31.10.2003. Thereafter, the petitioner made a renewal application seeking renewal of the lease for twenty years, but, keeping it pending for nearly 12 years, the said request for renewal was rejected by the impugned order in the year 2015. In the interregnum, the petitioner was not permitted to transport the stones already quarried by him and no Permit was given to the petitioner in this regard. Moreover, the petitioner claimed prejudice because of violation of principles of natural justice, as no opportunity was given before passing the impugned order.

15. Therefore, this Court is of the considered view that the impugned order has to go, for the following reasons:

(i) The petitioner has properly submitted the renewal application on 17.10.2003, so to say, even before the expiry of lease period on 31.10.2003.

(ii) The petitioner has not been given any opportunity of hearing before passing the impugned order, more particularly, after 12 years.

(iii) There is a huge delay in considering the renewal application and it ultimately ended in fatal to the purport for which such application is being filed.

(iv) Pending consideration of the renewal application, the petitioner ought to have been permitted to transport the stones already quarried, but it was not done, causing prejudice to the petitioner.

16. However, this Court, taking into consideration the time gap between the expiry of the lease period and the date of rejection of the renewal application, is refraining from quashing the impugned order. But, the grievance of the petitioner should be properly addressed by the respondents in accordance with law. In cases of this nature, the authorities who are in the realm of affairs, shall act swiftly to consider the renewal applications in time. Otherwise, it will lead to great loss to the Revenue as it had happened in the present case.

17. Therefore, this writ petition is disposed of, directing the respondents to issue Transport Permits to the petitioner to transport the already quarried granite blocks during the lease period in his patta lands measuring 0.81.0 Hectares, comprised in S.F.No.30/1A2, situated at Parayampattu Village, Gingee Taluk, Villupuram District, after collecting necessary fees, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

srcm/rsb

To:

1.The Additional Chief Secretary to Government,
The Government of Tamil Nadu,
Industries (MMB.2) Department, Fort St.George,
(Secretariat), Chennai-9.

2.The District Collector, Villupuram District.

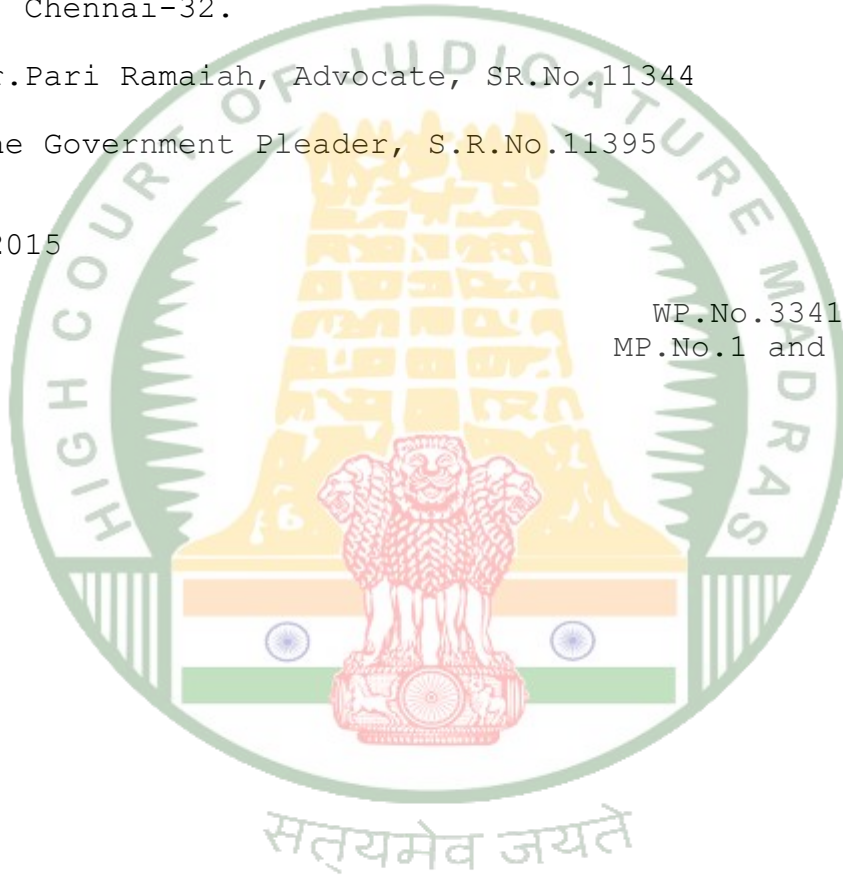
3.The Commissioner of Geology and Mining,
Directorate of Geology and Mining,
Guindy, Chennai-32.

+1cc to Mr.Pari Ramaiah, Advocate, SR.No.11344

+1cc to the Government Pleader, S.R.No.11395

BVR(CO)
EU(07/03/2015)

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